

REMARKS

Status of Claims

Applicant respectfully requests reconsideration and allowance of all of the claims of the application. Claims 1-19, 21-27, 29-35, 38, 39, 49-51 and 54 are presently pending. Claims 1-4, 6, 8-12, 22-26, 29, 30, 32, 34, 35, 38, 39, 49-51 and 54 have been amended. No claims have been added or withdrawn. Claims 2, 20, 28, 36, 37, 44-48, and 52-53 have been canceled. Claims 1, 29, 30, 34, 35, 39, 49, 50 and 54 are independent.

Statement of Substance of Interview

The Examiner graciously talked with me, the undersigned representative for the Applicant, on April 16, 2009. Applicant greatly appreciates the Examiner's willingness to talk. Such open communication is invaluable to both of us in our common goal of an expedited prosecution of this patent application.

During the interview, I discussed how the claims differed from the cited references, namely Pawlak and IBM. Without conceding the propriety of the rejections and in the interest of expediting prosecution, I also proposed several possible clarifying amendments.

The Examiner was receptive to the proposals, and I understood the Examiner to indicate that he would reconsider the patentability of the claims over the art of record upon receiving the amendments in a formal response.

Applicant herein amends the claims in the manner discussed during the interview. Accordingly, Applicant submits that the pending claims are allowable over the cited references of record for at least the reasons discussed during the interview.

Claim Amendments

Without conceding the propriety of the rejections herein and in the interest of expediting prosecution, Applicant amends claims 1-4, 6, 8-12, 22-26, 29, 30, 32, 34, 35, 38, 39, 49-51 and 54 herein. Support for the amendments may be found, for example, at least at paragraphs 0062, 0065, 0068, 0071, 0086, 0094, 0095 and 0100 of Applicant's published application, US2004/0187103. Such amendments are made to expedite prosecution and more quickly identify allowable subject matter, and should not be construed as further limiting the claimed invention in response to the cited references.

Claim Rejections under § 112, Second Paragraph

Claims 20, 28, 39, 54 are rejected under 35 U.S.C. § 112, second paragraph. Applicant respectfully traverses this rejection. Furthermore, in light of the cancelation of claims 20 and 28, and the amendments to claims 39 and 54, Applicant submits that these rejections are moot. Accordingly, Applicant asks the Examiner to withdraw these rejections.

Claim Rejections under § 102 and § 103

The Examiner rejects claims 49-53 under § 102. For the reasons set forth below, the Examiner has not shown that the cited references anticipate the rejected claims. In addition, the Examiner rejects claims 1-39, 44-48 and 54 under § 103. For the reasons set forth below, the Examiner has not made a *prima facie* case showing that the rejected claims are obvious. Accordingly, Applicant respectfully requests that the § 102 and § 103 rejections be withdrawn and the case be passed along to issuance.

The Examiner's rejections are based upon the following references alone or in combination:

- **Pawlak:** *Pawlak, Software Update Service to Ease Patch Distribution*, <http://www.directionsonmicrosoft.com/sample/DOMIS/update/2002/05may/0502sustep.htm>, April 22, 2002; and
- **IBM:** *IBM, RS/6000 ATM Cookbook*, Redbook.IBM.com, 2000.

Independent Claims 1, 29, 30 and 39

Applicant submits that Pawlak does not anticipate, and the combination of Pawlak with IBM does not teach or suggest at least the following elements, as recited in independent claim 1 (with emphasis added):

...assigning, by the server computer, a first level of service to one or more first client computers of the plurality of client computers;

assigning, by the server computer, a second level of service to one or more second client computers of the plurality of client computers, the levels of service assigned to the first and second client computers specifying information indicating a length of a time period between software update availability and software update installation, wherein the first level of service requires a first length of time for the software updates to be applied after being detected, and the second level of service requires a second length of time for the software updates to be applied after being detected, different from said first length of time;

scheduling, by the server computer, performance of the software updates to the first and second client computers according to the level of service assigned to each client computer of the first and second client computers, wherein updating of the first client computers assigned the first level of service is scheduled to take place within the first length of time and updating of the second client computers assigned the second level of service is scheduled to take place within the second length of time, different from the first length of time;

establishing a specified grace period for allowing users to perform the software updates, followed by an enforcement period during which the software updates cannot be postponed, wherein a length of time of the grace period is based at least in part upon the first or second level of service assigned to a particular client computer of the plurality of client computers, wherein the first level of service has a grace period length of time different than the second level of service; and

initiating, by the server computer, execution of the software updates to the first and second client computers, according to the scheduling.

On page 10, lines 4-9 of the Office Action, it is asserted that a grace period followed by an enforcement period is taught by Pawlak at pages A.2 – A.3. However, Applicant respectfully notes that there is no teaching or suggesting here or at any other location in Pawlak of establishing a specified grace period for allowing users to perform the software updates, followed by an enforcement period during which the software updates cannot be postponed, wherein a length of time of the grace period is based at least in part upon the first or second level of service assigned to a particular client computer of the plurality of client computers, wherein the first level of service has a grace period length of time different than the second level of service, as recited in Applicant's claim 1. For example, Pawlak describes the following:

Users with local administrative privileges on the SUS server can review the update packages received from the Microsoft Windows Update site and approve those they want to make available to client computers. Other panes allow administrators to configure settings, review logs, and manually trigger the synchronization process (page A.2).

Pawlak further shows a screen shot of an approval page of the Software Update Services web interface (page A.2). However, Pawlak does not teach a specified grace period followed by an enforcement period during which the software updates cannot be postponed, or different levels of service for different client computers, wherein a length of time of the grace period is based at least in part upon the first or second level of service assigned to a particular client computer. Instead, all the Pawlak describes is that when updates are available,

the user can review the update packages and approve those that they want to make available to client computers.

The remainder of Pawlak is similarly deficient in teaching or suggesting Applicant's above-recited claim limitations. For example, page A.3 of Pawlak shows a screen shot including critical updates that may be approved. However, there is no teaching or suggestion here of a specified grace period for installing the updates, or an enforcement period that follows a grace period during which the software updates cannot be postponed. Further, there is no teaching or suggestion of different levels of service, wherein a length of time of the grace period is based at least in part of the level of service assigned. Accordingly, Pawlak does not teach or suggest establishing a specified grace period for allowing users to perform the software updates, followed by an enforcement period during which the software updates cannot be postponed, wherein a length of time of the grace period is based at least in part upon the first or second level of service assigned to a particular client computer of the plurality of client computers, wherein the first level of service has a grace period length of time different than the second level of service, as recited in Applicant's claim 1.

IBM and the other art of record fail to make up for the shortcomings in Pawlak discussed above. For example, IBM discusses a grace period in the context of a heartbeat sent on an interface. As discussed at page 32, the grace period is set to one second less than the failure_detection_rate, and is set to 17 seconds whenever the failure rate is set to SLOW. Thus, Applicant respectfully submits that the discussion in IBM has little relevance to Applicant's claims, since IBM is discussing a detecting a heartbeat for determining network failure, and

not performing software updates. Page 151 of IBM, also cited as teaching a grace period in the Office Action is similarly deficient. Applicant respectfully submits that IBM is not discussing a grace period for the installation of software updates, but is instead discussing detection of failure in a network interface.

In view of the foregoing, Applicant respectfully submits that claim 1 is allowable over Pawlak, IBM and/or the other art of record, and is in condition for allowance. Applicant respectfully asks the Examiner to withdraw the rejection of claim 1.

Independent claims 29, 30 and 39 include similar limitations, and are allowable under a similar rationale.

Independent Claims 34, 35 and 54

Applicant submits that Pawlak does not anticipate, and the combination of Pawlak with IBM does not teach or suggest at least the following elements, as recited in independent claim 34 (with emphasis added):

...assigning a level of service to each client computer of the group of client computers for determining a frequency of performing software updates;

associating individual ones of the group of client computers into subgroups sized to allow simultaneous updating of the client computers in each subgroup without disrupting work flow of the entire group of client computers;

calculating an anticipated elapsed time required for application of each software update to be performed, while adjusting the

anticipated time according to expectations for each client computer in each subgroup;

setting failsafe timeout periods for applying each software update based the anticipated time for completion of each software update, wherein installation is assumed to have failed and installation is terminated when the installation of a particular software update exceeds the failsafe timeout period set for the particular software update;

establishing a change time-window for each of the subgroups, wherein the change time-window establishes a specific time period for updating the client computers in each subgroup during which the client computers in the subgroup may be taken down for update installation without disrupting the work flow of the entire group;

initiating, by the server computer, software updates to each client computer of a particular subgroup, wherein the initiating is performed for the particular subgroup within the change time-window established for the particular subgroup; and

monitoring, by the server computer, the failsafe timeout period for each software update on each client computer of the particular subgroup during installation of the software updates, wherein, when the failsafe timeout period is exceeded for a particular software update, the particular software update is suspended and a corresponding code is returned; and

when time remaining within the established change time-window is less than an amount of time required for installing remaining software updates and rebooting of the client computers in the particular subgroup, the installation of the remaining software updates is suspended to return the particular subgroup to service without exceeding the established change time-window.

On page 18, line 12 of the Office Action, it is state that Pawlak does not address monitoring by a server computer a failsafe timeout. It is further stated

at page 18, lines 13-14 of the Office Action, that IBM defines a failsafe time out period as a maximum time in seconds that allows a client to recover from network outage (citing pages 32 and 151 of IBM). However, Applicant respectfully notes that this teaching of IBM bears little relevance to Applicant's claim. The recited portion of IBM discusses a grace period in the context of detecting a heartbeat sent on an interface. As discussed at page 32, the grace period is set to one second less than the failure_detection_rate, and is set to 17 seconds whenever the failure rate is set to SLOW. Thus, the discussion in IBM has little relevance to Applicant's claims, which are directed to installation of software updates. Applicant respectfully submits that IBM alone, or in combination with Pawlak does not teach or suggest monitoring, by the server computer, the failsafe timeout period for each software update on each client computer of the particular subgroup during installation of the software updates, wherein, when the failsafe timeout period is exceeded for a particular software update, the particular software update is suspended and a corresponding code is returned; and when time remaining within the established change time-window is less than an amount of time required for installing remaining software updates and rebooting of the client computers in the particular subgroup, the installation of the remaining software updates is suspended to return the particular subgroup to service without exceeding the established change time-window, as recited in Applicant's claim 34.

In view of the foregoing, Applicant respectfully submits that claim 34 is allowable over Pawlak, IBM and/or the other art of record, and is in condition for

allowance. Applicant respectfully asks the Examiner to withdraw the rejection of claim 34.

Independent claims 35 and 54 include similar limitations, and are allowable under a similar rationale.

Independent Claims 49 and 50

Applicant submits that Pawlak does not anticipate, and the combination of Pawlak with IBM does not teach or suggest at least the following elements, as recited in independent claim 49 (with emphasis added):

...assigning a level of service to each client computer of the plurality of client computers for determining a frequency of performing software updates, wherein a first level of service requires a first length of time in which the software updates are to be applied after being detected, and the second level of service requires a second length of time during which the software updates are to be applied after being detected, different from said first length of time;

using a particular client computer of the plurality of client computers as a reference client computer, wherein the reference client computer has a standard image representing the plurality of client computers used to generate a template of approved updates for facilitating update detection and deployment;

establishing a file to record information including approved updates approved for the reference client computer;

scanning the reference client computer in a template mode to generate a list of the approved updates to be applied to the standard image on the reference client computer;

incorporating the list of the approved updates into the template, wherein the approved updates needed for the plurality of client computers are a subset of updates identified from a larger update package;

deploying the template to the plurality of client computers; and

initiating software updates to the plurality of client computers according to the template and the assigned level of service.

On page 6, lines 7-15 of the Office Action, it is asserted that generating a template of approved updates is taught by Pawlak's Software Update Service Flowchart and the SUS Web Interface. However, Applicant respectfully notes that there is no teaching or suggesting here, or at any other location in Pawlak, of assigning a level of service to each client computer of the plurality of client computers for determining a frequency of performing software updates, wherein a first level of service requires a first length of time in which the software updates are to be applied after being detected, and the second level of service requires a second length of time during which the software updates are to be applied after being detected, different from said first length of time; using a particular client computer of the plurality of client computers as a reference client computer, wherein the reference client computer has a standard image representing the plurality of client computers used to generate a template of approved updates for facilitating update detection and deployment; and initiating software updates to the plurality of client computers according to the template and the assigned level of service, as recited in Applicant's claim 49.

For example, Pawlak describes a Software Update Service Flowchart on page A.1 that includes a server-side process and a client-side process. However, there is no discussion of assigning different levels of service to a plurality of client computers for determining a frequency of performing software updates, as recited in Applicant's claim 49. Further, there is no discussion of using a particular client computer of the plurality of client computers as a reference client computer, wherein the reference client computer has a standard image representing the plurality of client computers used to generate a template of approved updates for facilitating update detection and deployment, as also recited in Applicant's claim 49. In addition, there is no discussion of initiating software updates to the plurality of client computers according to the template and the assigned level of service, as also recited in Applicant's claim 49.

IBM and the other art of record fail to make up for the shortcomings in Pawlak discussed above. In view of the foregoing, Applicant respectfully submits that claim 49 is allowable over Pawlak, IBM and/or the other art of record, and is in condition for allowance. Applicant respectfully asks the Examiner to withdraw the rejection of claim 49.

Independent claim 50 includes similar limitations, and is allowable under a similar rationale.

Dependent Claims

In addition to its own merits, each dependent claim is allowable for the same reasons that its base claim is allowable. Applicant requests that the Examiner withdraw the rejection of each dependent claim where its base claim is allowable.

Conclusion

All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the **Examiner is urged to contact me before issuing a subsequent Action**. Please call or email me at your convenience.

Respectfully Submitted,

Lee & Hayes, PLLC
Representatives for Applicant

_____/Colin D. Barnitz/_____
Dated: May 4, 2009

Colin D. Barnitz (colin@leehayes.com; 512-505-8162x5002)

Registration No. 35061

Emmanuel A. Rivera

Reviewer/Supervisor (emmanuel@leehayes.com; xXXX)

Registration No. 45760

Customer No. **22801**

Telephone: (509) 324-9256

Facsimile: (509) 323-8979

www.leehayes.com